THE COURTS.

Important Decision by the Court of Appeals.

DEFINING APPEALABLE ORDERS.

Judge Van Vorst Sustains Lawyer Power's Benevolent Gifts.

MR. MAIER'S UNRESTRAINED TRUMPET

The Court of Appeals has just rendered an important opinion in the case of William R. Martin vs. The Windsor Hotel Company, which was brought by the plaintiff, who is a lawyer, to recover some $60,000 for professional services rendered to the hotel company during an extended period. The case was brought before the Court of Appeals on an appeal from a decision of the General Term refusing to order a reference, which was asked for on the ground that the case involved the examination of a long account. The text of the decision in the Court below was given in the HERALD at the time, and it will be remembered that Chief Justice Davis, who wrote the opinion of the Court, animadverted at large upon the evils attendant upon referring cases of this description to brother lawyers. The opinion of the Court of Appeals, which is written by Chief Justice Church, is as follows:—"It is conceded that the action is referable under the statute, and whether it should be referred or not was discretionary with the Court below, and the order is not therefore appealable to this court. The point insisted upon is that the order was not appealable to the General Term. Section 349 of the Code provides, among other things, that an order is appealable from the Special to the General Term 'when it involves the merits of the action or some part thereof or affects a substantial right.' The question is, whether this order affects a substantial right. It is claimed that a substantial right within the meaning of the code is an absolute legal right, and that a matter which is discretionary is not a substantial right, and hence not applicable to the General Term. There are judicial expressions made during the earlier period of the Code which favor this view, but it is an erroneous construction, and it has been settled that the General Term may review orders that affect substantial rights, although discretionary. Denio, J., in 29 N. Y., 418, in defining a substantial right, distinguished it from a merely formal matter or right. It is only necessary that the order to be appealable must affect a substantial interest—a matter of substance and not of mere form, and it may be such an order and yet be discretionary. The Code in section 11, sub. 4, recognizes that an order affecting a substantial right may be discretionary by providing that an appeal will lie to the Court of Appeals in certain cases from an order affecting a substantial right 'not involving any question of discretion.' It has been urged that as the Court of Appeals will not review a discretionary order, the third sub. of the eleventh section providing for an appeal to that court from a final order in a special proceeding, 'affecting a substantial right' without the qualifying words employed in sub. 4, above quoted. The General Term has therefore no power to review a discretionary order under section 349, where the same words are used. The answer to this is that the Court of Appeals refrain from receiving such orders, when discretionary, not from any prohibition implied by the words 'substantial right,' but from the constitution and functions of the court, as an appellate tribunal restricted to a review of questions of law only, while the General and Special Terms of the Supreme Court are but different parts of the same court, of equal original jurisdiction, and the former can review and correct orders made by the latter, whether discretionary or not, provided they affect matters of substance. (Howell vs. Mills, 53 N. Y., 322.) The question involved below was a right to a trial by jury or referee, and whether the parties should have the controversy determined by one tribunal or the other was a matter of substance, and hence appealable, although the Court had power, in the exercise of its discretion to order either mode of trial. The substitution of the tribunal, the mode of trial, the effect of the verdict and the mode and grounds of review are entirely unlike and affect substantial interests of the parties to the action. The constitution has protected the rights of trial by jury in a certain class of cases, and, as to others, the statute permits a reference. A reference is not an absolute right in any case. Whether the Court will exercise the power conferred of referring any action which the statute authorizes to be referred depends upon all the circumstances of the case, and the exercise of the power in a given case is clearly reviewable by the General Term, but not by this court. The appeal to this court must, therefore, be dismissed."

A LAWYER'S BENEVOLENT WILL.

John H. Power, formerly a lawyer of this city, died, leaving behind him a considerable estate. By his will he devised one-third of the residue of this estate to his wife and one-third to his nephew, Peter Rice, and disposed of the remainder in these words:—"The balance I give to my executors, to be divided by them among such Roman Catholic charities, institutions, schools or churches in the city of New York as a majority of my executrix and executors shall decide, and in such proportions as they may think proper." This provision was contested as being void for indefiniteness, and in a suit brought by the widow, as executrix, against the two executors to test that question, which was tried before Judge Van Vorst in Supreme Court, Special Term, a decision was rendered yesterday. The claim of the plaintiff was that, assuming this clause of the will to be void and inoperative in law, the portion of the estate therein attempted to be given was undisposed of. In his opinion Judge Van Vorst says:—"After a careful consideration I see nothing really vague or uncertain in the disposition made by the testator. There is no uncertainty with respect to the trustees, for they are named and have power to act. Nor, in a true sense, is there uncertainty as to the particular object of the testator's trusts. He was a Roman Catholic, and his desire was that schools and institutions of charity connected with his Church should share in a definite portion of his estate. It is evident that the object which the testator would favor was the religious teaching and work of charity in which his Church was engaged, and that not in a universal sense, but with limitation as to locality. The Church, the school, the institution in the city of New York, were particular agencies through which the testator would accomplish his religious and benevolent purposes. There is nothing vague, indefinite or uncertain with regard to these agencies as a class. They are distinct and can readily be separated from the large number of religious and charitable organizations of New York maintained by other Christian or benevolent bodies. They, in fact, constitute a limited and well defined class, have each a distinct organization and are bodies corporate. The duty of designating the particular institutions from the general class is devolved upon the executrix and executors, who are also to determine the amount each should receive. And when that has been done the action would have the same effect as though the names of the particular institutions and charities were written in the will, and a court of equity would have no difficulty in enforcing the trust by its judgment. There could be no doubt that if, instead of devolving upon his executors the duty of selecting from a limited class of charitable societies those to share in his bounty, the testator had made the selection himself, and written the names of the beneficiaries in the will, the gift would have been legal. It appears to me it is no less so from the fact that he has intrusted an office which he could have himself performed—that is, the making of the selection—to the decision of the trustees appointed by him, he designating the special class from which the selection was to be made. Such decision, when made, exhausts the power of the trustees on that subject, and having been made, and the beneficiaries designated being parties to this action, together with all others interested in the estate, there is not the least difficulty on the part of the Court in making a just, complete and protective judgment, by which the whole estate may be justly and according to the will of the testator finally distributed. I do not think the benevolent intentions of the testator should be defeated through the interposition of imaginary or apprehended obstacles when the case is presented in a form in which all just ground of difficulty or uncertainty is removed, and in a manner in which the testator contemplated and expressly directed. Nor is the fact, if it be so, that some of the Roman Catholic institutions in the city of New York were at the death of the testator unincorporated any objection to the validity of the gift in question. It is enough that there were schools and institutions answering the description of those named in the will incorporated and competent to take. * * * By a refusal or omission to act with them (the executors) after notice she (the executrix) could not defeat the will." The opinion concludes:—"I am of the opinion that the widow is entitled not only to the annuity of $8,000 per annum during her natural life, but also to one-third of the residue of the estate, including the fund or property out of which the annuity is raised. But the principal of that fund cannot be impaired or disposed of by her, to take effect during her life. The fund must remain intact so long as she shall live to produce the annuity. Upon a careful consideration of the whole will I must conclude that the testator contemplated a conversion of the realty into personalty." This was contemplated to carry into effect, the Judge holds, the charitable objects of the deceased. The only trust in the executors in respect to this portion of the estate is to sell the same, and to divide the proceeds among the beneficiaries, to whom the same is in effect given. Findings are ordered to be drawn in conformity with the foregoing views.

AN IMPORTANT CITY DECISION.

The Court of Appeals has handed down an opinion in the suit of Tone vs. The Mayor, upon a point of considerable importance to contractors with the city. Tone sued for a balance of $6,000 due under a contract for regulating and grading 121st street. By the terms of the contract, according to the usual form adopted in contracts for work of this description, payment was to be made "upon the confirmation of the assessment." As no assessment had been confirmed when the suit was commenced the city contended that there was nothing due. The plaintiff contended that the Board of Revision and Correction of Assessments unreasonably neglected and refused to confirm the assessment, and that the Corporation could not avail itself, in defence to a just claim, of the negligence of its own servants and agents. The Court of Appeals holds that in the discharge of their duties the Board of Revision and Correction acted as independent public officers, engaged in the public service; that they were not under the control of the Corporation, nor were their powers exercised for the peculiar benefit of the Corporation; that they were charged with a public service, and that for any negligence or omission, therefore, in the discharge of their duties, no action will lie against the city. The remedy of any one injured by their acts is by certiorari or mandamus directed to the Board itself. For these reasons the judgment of the Court below, dismissing the complaint, is affirmed. For the plaintiff, Mr. John H. Strahan; for the city, Corporation Counsel Whitney and A. J. Requier.

MAIER'S MUSIC.

The case of John Maier, the beer seller and musical director, of Essex street, which has been already noticed in the HERALD, was again before Judge Westbrook, in Supreme Court, Chambers, yesterday, for final determination. He was imprisoned for having given musical entertainments in his lager beer saloon, in defiance of the Theatrical License law and an injunction of the Supreme Court. He asked for his discharge from imprisonment on the triple ground of poverty, sickness and repentance. Yesterday his counsel, Colonel Spencer, presented the medical certificate of his condition to Judge Westbrook. It was pronounced satisfactory, and Maier was ordered to go free. He departed vowing that though they had judicially banished from his "bier halle" all music of mild and consoling strain, yet while there was breath in his nostrils and the snuff held out the sound of his horn should echo and re-echo from the vaulted ceiling.

A KING'S ARMORER UNPAID.

Henry Hatter brought a suit against George Rignold to recover a balance of $79 due for services rendered. The cause was tried and disposed of yesterday, before Judge Clancy, in the Second District Court. It appeared that the plaintiff, who has been in the employ of Messrs. Jarrett & Palmer for eleven years, had charge of the properties and armor used in Henry V., which character Mr. Rignold was playing under the management of Jarrett & Palmer. Early this year Mr. Rignold purchased the outfit of the character, and in April, under an arrangement with John A. Stevens, started on a tour in the Southern States, carrying with him his armor and plaintiff as his armor bearer at a salary of $25 a week. In this capacity, the plaintiff says, he acted and took charge of the "stuff" for six weeks, for which services the balance sued for remained due. The Court, on motion of plaintiff's counsel, Mr. Benjamin H. Russell, rendered judgment for the full amount claimed.

SUMMARY OF LAW CASES.

In Supreme Court, Chambers, yesterday, Judge Westbrook granted a writ of habeas corpus in favor of John T. Riley. Riley is undergoing imprisonment in the County Jail as a national guardsman for non-payment of $8 25 fines.

In the matter of the receivership of the late firm of Hoyt, Sprague & Co. an order was entered in the Supreme Court yesterday confirming the report of William P. Dixon, the referee, in favor of the payment of a second dividend of five per cent by the receiver, Mr. Juilliard.

In the suit of David Groesbeck against Clinton Roosevelt and others, which involves, in some vague form, issues in respect to the corporate rights of Trinity Church—issues which have become both rusty and dusty with age—Judge Westbrook yesterday vacated an order of reference which had been previously granted on the application of Groesbeck.

Nearly four hundred assessment suits against the city were yesterday discontinued by Judge Van Hoesen, in the Court of Common Pleas, by consent.

James Flanagan was yesterday enjoined by Judge Van Hoesen from using the premises No. 207 Chatham street for his business until proper modes of egress and ingress in case of fire are erected.

Miss Clara Moore, of No. 114 Baxter street, was before United States Commissioner Shields yesterday on a charge of passing a counterfeit twenty dollar note purporting to be issued by the National Bank of Commerce of this city. District Attorney Foster, however, abandoned the case, the prosecutor declining to swear that Miss Moore knew of the spurious character of the note.

In the matter of the contest of the will of Miss Maria Hobby, the sister of the late Dr. Valentine Mott, objections to the will were yesterday withdrawn. Miss Hobby left an estate of about $150,000, about one-third of which she devised in equal shares between Mr. William Underhill and Judge Williams, of Onderdonk, Queens county.

The case of Jeannie Morrell against her former husband, John H. Morrell, to have her right of visitation to their only child defined by the Court, was argued before Judge Westbrook in Supreme Court, Chambers, yesterday, by Messrs. Charles Tracy and James W. Gerard on behalf of the father, and by Mr. Pelton on behalf of the mother. The mother had got out an ex parte injunction restraining the father, in whose custody the little girl is by the decree of a Connecticut Court, from removing her from her present residence or beyond access by the mother. The father appeared in response to an order to show cause why this injunction should not continue. Affidavits were read on both sides, the contents of which have already appeared in the HERALD. Judge Westbrook found that nothing had been presented showing that the father had abused the discretion given him by the Connecticut decree, and made an order vacating the injunction against him.

DECISIONS.

SUPREME COURT—CHAMBERS.

By Judge Lawrence.

Vos vs. The Third Avenue Railroad Company.—Give notice of motion at Chambers.

Reuter vs. Reuter.—Apply to Judge at Chambers for leave to renew.

The People, &c., vs. Tarrytown Heights Land Company.—Granted.

Cambell vs. Hegeman.—Order as settled.

The People, &c., vs. Coman.—Order granted.

SUPREME COURT—SPECIAL TERM.

By Judge Van Vorst.

Odell, &c., vs. Mylius et al.—Findings signed.

Newell, &c., vs. Ridgway et al.—These exceptions must be served on the attorneys for the other parties.

Power, &c., vs. Cassidy, &c.—Validity and construction of will of John H. Power determined. Opinion.

SUPERIOR COURT—SPECIAL TERM.

By Judge Sanford.

Krausch et al. vs. Reynolds.—Case and exceptions ordered on file.

Richardson et al. vs. Stoughton et al.—Ordered on short calendar for June 29.

Savory et al. vs. Law et al.—Order granted and undertakings approved.

Salter vs. Ebervale Coal Company.—Order for commission.

Lovejoy et al. vs. the Campbell Printing Press Manufacturing Company.—Order on special calendar for last Friday of June.

Paparot vs. Candinet et al.—Order amending summons.

Matter of Platt, &c.—Order denying motion for injunction.

The Nassau Bank vs. Brown.—Ordered on short calendar.

Rowell et al. vs. Giles et al.—Order denying motion for reference.

Watson et al. vs. Mount.—William A. Parshall appointed receiver, &c.

Winfield vs. Klein.—Ordered on day calendar for June 18.

Savery et al. vs. Fosdick.—Order granted and undertaking approved.

Beyer vs. Amatel.—Order denying motion to vacate order of arrest.

North vs. The Mayor, &c.—Ordered on day calendar for June 15.

Smith vs. Smith.—Order denying motion, without costs.

Coo vs. The Society of the New York Hospital.—Order granted and undertaking approved.

Butler vs. Austin.—Order for Commissioner.

Lord vs. Hert.—Undertaking approved on justification.

Wilson vs. Davis; Webl vs. Hyman; Evans vs. Vose et al.; Hill vs. Appleby.—Orders granted.

COMMON PLEAS—SPECIAL TERM.

By Judge Van Hoesen.

Spratt vs. Crawford; The Mayor vs. Drusnive; Weaver vs. Dodd; Smith and Another vs. Trask; Miller vs. Connor.—Motions granted.

Bradhurst vs. Farley et al.—Motion to amend summons and complaint granted.

Davis vs. Oceanic Steam Navigation Company.—Motion granted, without costs to either party.

Allen and 368 others vs. the Mayor.—Motions granted, without costs to either party.

MARINE COURT—CHAMBERS.

By Judge Goepp.

Baldwin vs. Waddell.—Motion denied. No costs.

Levy vs. Schwarz.—Motion granted.

Thornhill vs. Seibrecht.—Referred to Hon. Justice McAdam (see opinion filed June 13).

Hutchins vs. Partington.—Order refused.

Morris vs. Partridge.—Henry R. Beekman appointed receiver.

Marx vs. Leopold.—Order settled and filed.

Deering vs. Conkling; O'Neill vs. O'Connor; Smith vs. Ham; Setter vs. Schlessinger; Taitute vs. Mann; Hosea vs. Lighthill; Dannat vs. Mushlet; Liedeman vs. Smith; Fuchs vs. Doebell; Gawtry vs. Silk Manufacturing Company; Kellogg vs. Barrowcliffe; Chapman vs. Openheym; Lindell vs. Hansen; Freeman vs. Bernish; Adams vs. March.—Orders granted.

Watson vs. Pfeiffer.—Motion denied unless terms are complied with.

Bruce vs. Quinn.—Motion denied unless within ten days plaintiff will stipulate not to bring an action on the arrest nor on the undertaking. In that case motion granted without costs.

O'Connell vs. O'Neill.—Motion denied unless terms are complied with.

By Judge Sinnott.

Thompson vs. McCollum.—Joseph P. Fallon, Esq., appointed receiver and order filed.

GENERAL SESSIONS—PART 1.

Before Judge Sutherland.

THE LEITH FORGERY CASE.

The trial of William Leith and William H. Leith, father and son, for forgery, the facts of which have already been fully set forth, was resumed yesterday by Assistant District Attorney Bell summing up on the part of the prosecution. He ridiculed the theory set up by the defence, submitting that the story as told by young Leith as to his father's innocence was inconsistent and absurd. After a forcible argument he concluded by asking for a verdict against both prisoners. Judge Sutherland then charged the jury, who, after a brief absence, rendered a verdict of guilty. The trial was on the specific charges of forging a check for $4,770 50 on the Merchants' Exchange National Bank. William H. Leith, the younger, when again arraigned at the conclusion of the trial, pleaded guilty to the second indictment, that of forging a check for $12,750 25, in which transaction he was also implicated. The two prisoners were remanded for sentence. Veltman, the bookkeeper of Messrs. Brice & Smith, who was also implicated in the forgeries, pleaded guilty to both indictments and was remanded.

PLEAS AND SENTENCES.

A youth named Samuel Brockman, of No. 59 Orchard street, pleaded guilty to the charge of picking the pocket of Emilie Koening and abstracting $5 on the 4th inst., while the lady was walking up Fifth avenue. The prisoner was sent to the House of Refuge.

Thomas Crowley snatched a pocketbook containing $3 from Mrs. Lewis Lewinsochm, of No. 447 Third avenue, while standing at Thirty-first street. He was sentenced to three years' imprisonment.

William Gilbert, a cook, No. 146 East Houston street, pleaded guilty to the charge of assault and battery, having beaten Mary E. De Burge, of the same address, on the 5th inst. One year in the Penitentiary.

George Smith, alias Sidenstahl, an errand boy, of No. 112 East Nineteenth street, stole $96 in money and jewelry from Louis Keiser, No. 1,494 Third avenue, on the 5th inst., and was sent to the Penitentiary for one year.

Walter Peoplis, No. 68 Cliff street, pleaded guilty to petit larceny from the person, having stolen a pocket handkerchief from John Prior, No. 466 Pearl street, and was sent to the State Prison for two years.

The case of Elbert Petit, No. 138 East Fifteenth street, who, it is alleged, fired a pistol at Mrs. Turner, of No. 276 Fourth avenue, and wounded her, was on the calendar, but on the motion of his counsel, Mr. John O. Mott, the trial was adjourned until Tuesday next.

GENERAL SESSIONS—PART 2.

Before Judge Gildersleeve.

A SKILFUL PICKPOCKET OVERHAULED.

A delicate looking young man, who gave his name as James Flaherty, and his residence No. 112 Second avenue, was arraigned for trial by Assistant District Attorney Herring, charged with stealing a gold watch from the person of Frank E. Anderson, a salesman at No. 63 Liberty street. From the evidence of the complainant it appears that as he was walking up Broadway he was jostled by the prisoner near Grace Church. He turned round and saw the accused, who went ahead. In a few minutes he missed his watch, and gave information of his loss at police headquarters. He identified a picture in the "Rogues' Gallery" as that of the person who relieved him of his property, and subsequently identified him when brought into his presence. The prisoner was convicted and sent to the State Prison for three years and six months.

John Motschenbacher stole a gold watch and $27 in money from Catharine Nachtman, No. 79 Ridge street, and on pleading guilty was sent to the State Prison for two years.

COURT CALENDARS—THIS DAY.

SUPREME COURT—CHAMBERS—Held by Judge Westbrook.—Nos. 80, 101, 106, 139, 142, 152, 204, 245, 246, 291, 303, 306, 313, 319, 322, 324, 325, 326.

SUPREME COURT—GENERAL TERM.—Adjourned until July 6.

SUPREME COURT—SPECIAL TERM—Held by Judge Donohue.—Demurrers—Nos. 22, 26. Law and fact—Nos. 491, 223, 155, 85, 501, 508, 509, 510, 515, 526, 533, 541, 342, 136, 391, 192, 131, 537, 458, 407, 476, 440, 410, 322, 48, 478, 514, 525, 529, 298, 497, 465, 263.

SUPREME COURT—CIRCUIT—Part 1—Held by Judge Barrett.—Nos. 4537, 4995, 4961, 3766, 2584, 4355, 5005, 4401, 4451, 5027, 4899, 4569, 4763, 4941, 3859. Part 2—Held by Judge Potter.—Short causes—Nos. 4768, 3962, 5068, 4900, 5096, 5098, 5072, 5042, 5084, 4272, 4602, 4296, 3248, 4774, 4994, 5100, 5094, 3836. Part 3—Held by Judge Van Brunt.—Short causes—Nos. 3947, 3766, 5043, 5055, 5029, 4919, 4960, 4205, 5061.

SUPERIOR COURT—GENERAL TERM.—Adjourned until Monday, June 18.

SUPERIOR COURT—SPECIAL TERM—Held by Judge Sanford.—Nos. 67, 53, 68, 10, 75. Demurrer.—No. 7.

SUPERIOR COURT—TRIAL TERM—Part 1—Held by Judge Sedgwick—Short causes.—Nos. 1120, 1133, 1269, 1274, 1056, 1307, 1317, 1327, 1164, 1390. Part 2—Held by Judge Curtis—Case on.—No. 422. No day calendar. Part 3—Held by Judge Speir.—Nos. 999, 1232, 952, 344, 175, 1069, 755, 734, 1137, 1063, 804, 340, 341, 1383, 1366, 334, 1095, 1168, 1171, 1172, 1178, 1180, 1181, 1188, 475, 1034, 1025, 1044, 869, 782, 803, 1135, 770, 1182, 1166, 220, 429, 1174, 1247, 390½, 1249, 1251, 1253, 1254, 1255.

COMMON PLEAS—GENERAL TERM.—Adjourned until next Monday for the purpose of rendering decisions.

COMMON PLEAS—EQUITY TERM—Held by Judge Van Hoesen.—No day calendar.

COMMON PLEAS—TRIAL TERM—Part 1—Held by Judge Robinson.—Nos. 362, 381, 477, 1945, 270, 1135, 627. Part 2—Held by Judge Daly.—Nos. 1143, 127, 229, 1285, 1288, 1291, 901, 144, 1679, 587, 1915, 2064, 1129, 761, 307. Part 3—Held by Judge J. F. Daly.—Nos. 42, 224, 1267, 1178, 1840, 929.

MARINE COURT—TRIAL TERM—Part 1—Held by Judge Alker.—Nos. 8281, 9012, 7963, 9606, 9310, 8794, 9624, 8451, 9686, 9618, 9086, 9697, 8371, 9719, 9707, 9256, 9714, 9698, 9699, 9366, 8766, 7369, 9729, 9623, 7100, 8046, 9730, 9712, 9620. Part 2—Held by Judge Sheridan.—Nos. 9393, 9642, 9487, 9363, 9568, 9613, 9570, 9663, 9151, 9558, 8459, 9581, 8909, 9628, 7308, 8495, 9702, 9058, 9708, 9694, 9653, 9710, 8950, 9666, 9692, 9722, 9616, 9604, 9721, 9659. Part 3—Held by Judge Sinnott.—Short causes—Nos. 8059, 9605, 9630, 9622, 9122, 9230, 8803, 9011, 7938, 9513, 9665, 9626, 9481, 9484, 9483, 9485, 9648, 8331, 9717.

COURT OF GENERAL SESSIONS—Part 1—Held by Judge Sutherland.—The People vs. William Stevens, robbery; Same vs. Michael Tully, burglary; Same vs. Michael Fogarty, burglary; Same vs. Barker Kenney, forgery; Same vs. Bruno Fihuderski, bigamy; Same vs. Frank Sohnabohm, incest; Same vs. Amelia Schubart and Lizzie Schubart, grand larceny; Same vs. Eugene Semenier, grand larceny; Same vs. Peter Dwyer, petit larceny; Same vs. Catharine Bauer, misdemeanor. Part 2—Held by Judge Gildersleeve.—The People vs. James Clifford, felonious assault and battery; Same vs. Henry Fox and Charles Colville, forgery; Same vs. Alexander Bennett, grand larceny; Same vs. James A. M. Feeley, petit larceny; Same vs. Alexander Dowd, assault and battery; Same vs. Frank Masterson, disorderly house; Same vs. Patrick Slavin, squatting.

COURT OF APPEALS.

ALBANY, N. Y., June 14, 1877.

In the Court of Appeals, June 14, 1877:—

No. 71. Hathaway vs. Howell.—Argument resumed and concluded.

No. 75. Morton vs. Weir.—Submitted.

No. 82. Sterutels vs. Clark.—Argued by J. J. Perry for appellant and J. L. Overfield for respondent.

No. 83. Miller vs. Hall.—Argued by William W. Badger for appellant, and Thomas H. Barowski for respondent.

Adjourned.

CALENDAR.

The following is the day calendar of the Court of Appeals for Friday, June 15, 1877:—Nos. 81, 15, 74, 84, 87, 89, 91, 95.

MARY HANSEN'S TRIUMPH.

THE FIRST CHAPTER OF HER ADVENTURES IN JERSEY CITY CONCLUDED—THE JURY RENDER A VERDICT OF ACQUITTAL—A SECOND TRIAL COMMENCED.

The trial of Mrs. Mary Hansen, alias Mrs. Mary Gibson, on the charge of obtaining money under false pretences from Horace Farrier was resumed in the Court of Quarter Sessions at Jersey City yesterday. The court room was more crowded than on the previous day.

The examination of the defendant was resumed, and she testified:—I spent nearly all the money I got from Farrier's sister for clothing for the Farrier family; gave Fred $10; the sum of $220 that I received I used to pay my debts in Philadelphia; I thought I had a right to borrow money from them when I spent the money on all the family when they stopped at my house during the Centennial; the money I next borrowed from Horace I spent on Fred; the following loan I spent in paying some of my debts in Philadelphia, where it cost me $550 for carriage hire for three or four weeks; I bought a silk dress for Mrs. Horace Farrier which cost me $85; bought a bed screen for Mrs. Horace Farrier when she was in Philadelphia which cost me $10; bought for her a cameo ring that cost me $15; all the presents I gave at the wedding of Horace Farrier's sister were paid for except the wine; gave Sam Garretson in October the papers for safekeeping; gave him a power of attorney to collect all the moneys that had been or should be in the future due to her, and more especially the money which should come through the hands of Cardinal McCloskey, which would amount to $648,000; Garretson handed me back the papers and I gave them to Horace Farrier; they were not the papers for my fortune, for I was not going to give the Farrier family $700,000; Horace Farrier asked me for the papers, as he said he could keep them safely; the property I have spoken of I will get yet; saw Cardinal McCloskey; had letters from my uncle, the Bishop of Freiburg, while he was living; have an uncle living in Baden and an unmarried aunt in Hartford, Conn., named Wolff; was arrested in New York nine years ago and detained in the Tombs for a few weeks; my first entrance into the Farrier family was in June, 1876; I paid $3,300 for the jewelry I gave the Farriers and $109 for wine. (Defendant here produced bills and gave the names of the jewellers and their addresses in Philadelphia from whom she purchased.)

AN ARTFUL CARD.

The testimony on both sides was here closed and Mr. Winfield summed up for the defence. He charged that the Farriers were playing the defendant for her money, believing her to be a rich widow and the heiress of a wealthy Catholic archbishop. The whole transaction was manifestly a game of euchre between the Farriers and the defendant. The latter held the joker, took their bower and they squealed. He concluded by calling on the jury to acquit the defendant.

ACQUITTED.

District Attorney Garretson replied for the State, contending that the defendant was an adventuress, who had been thriving for years in the peculiar line of business developed during the trial. Judge Hoffman delivered a brief and impartial charge, and the jury, after deliberating one hour, returned a verdict of not guilty. There was an attempt at applause, which was quickly suppressed.

AGAIN ON TRIAL.

The District Attorney then moved the trial of the second indictment against Mrs. Hansen, charging her with obtaining the sum of $1,395 by false pretences from Samuel Garretson. The material points in the case are identical with those in the case just concluded. A jury was empanelled and the trial will be opened this morning. Some spicy revelations are expected.

PUSHING THE EXCISE WAR.

ANOTHER CRUSADE BY THE TEMPERANCE ADVOCATES—THE ARREST OF THE BOARD OF EXCISE ASKED FOR.

Among the papers handed to Justice Smith, sitting in the Tombs Police Court yesterday, was a petition, signed by Counsellor W. H. Mundy, asking for a warrant for the arrest of George W. Morton, Owen Murphy and Jacob M. Patterson, Jr., comprising the Board of Excise of the city of New York.

The petition set forth that the persons named, acting as a board of excise, had granted to the firm of Koster & Bial, a license for the sale of ale and beer in quantities less than five gallons, to be drunk on the premises, said act being in contravention of the Laws of 1857, section 7, chapter 20, Revised Statutes, and by such declared to be a misdemeanor.

Mr. Mundy stated, in making the application, that his purpose was not so much to wage a war against the Board of Excise as to test the law. He also stated that the firm mentioned in his petition was selected haphazard merely with a view of making such test. Justice Smith listened to the counsellor's argument, and replied that he would look into the law and render a decision to-day.

Mr. Mundy, it will be remembered, is the contestant who, several months ago, carried the question of licenses before the Court of Appeals and won a unanimous decision that licenses for the sale of spirituous liquors in quantities less than five gallons to be drunk on the premises could not be issued to persons other than the proprietors of inns, taverns or hotels. The decision created at the time considerable consternation among the liquor dealers, but the prospect of a special enactment on the subject, legalizing the present licenses, quieted their fears. The Legislature, however, adjourned without remedying the matter. Mr. Mundy's former crusade was directed against strong liquors, not including ale or beer, although both the latter, he claims, come within the decision. His failure to apply the law in question to ale and beer was for purpose of policy, he desiring first to settle the matter so far as the stronger liquors was concerned.

The time now, however, he claims, is ripe for a crusade against ale and beer, and he intends to again carry the matter, if necessary, to the Court of Appeals, and it was with this end in view that he makes his application for the arrest of the Excise Commissioners.

THE LAW AS IT IS SAID TO BE.

As stated by the petition, the law relating to the granting of licences enacted in 1857 permits the issuing of licenses for the sale of liquor in quantities less than five gallons to be drunk on the premises, only to keepers of inns, taverns or hotels, and makes any violation of the same by any board of excise a misdemeanor. Thus the law stood until 1866, when the Tweed Metropolitan Excise act became a law. Its provisions virtually abrogated those of the previous law and made it lawful to issue licenses to saloon keepers to sell liquors in all quantities to be drunk on the premises.

In 1869 another law was passed allowing boards of excise all over the State to grant similar licenses, excepting in the Metropolitan Police district (New York and Brooklyn), which already enjoyed the same privileges under the Tweed Excise law before mentioned.

WHERE THE SHOE PINCHES.

In 1870 the Legislature repealed the Tweed Excise law. The case then stood thus:—Throughout the State, except the Metropolitan Police district, the law of 1869 allowing the granting of licenses to saloons was in full force. But the repeal of the Tweed Excise law threw New York and Brooklyn back for their legislation on the next preceding law applicable to the subject—viz., the law of 1857, which forbade the issuing of licenses to saloons.

In the last crusade Mr. Mundy obtained, as said before, a decision from the Court of Appeals that this law of 1857 was still in force. At the present time, therefore, it is lawful outside the cities of New York and Brooklyn for boards of excise to grant saloon licenses, but in the cities named, comprising as they do the Metropolitan Police district, it is a misdemeanor.

THE OBJECT OF THE CRUSADE.

In conversation with a HERALD reporter yesterday Mr. Mundy stated that he believed his application for a warrant would be granted and the question thus decided. He expressed confidence in the strength of the position which he, acting as the representative of the temperance people, had assumed, and he believed his stronghold could not be shaken by the discovery of any subsequent legislation or the advancement of any sophistry. As to whether the advocates of temperance meant to keep up the agitation in case of another favorable decision, and make matters lively for the liquor dealers or not, he was not prepared to say. As to the probable course of the liquor dealers he was equally reticent, but expressed his opinion that those who choose to sue the Board of Excise might recover a proportional part at least of the money which they paid for their licenses. He ascribes the present muddle to oversight on the part of the Legislature.

NEW JERSEY'S CENTENARIAN.

A century ago, in the Dorsett homestead at Bethany, Monmouth county, N. J., Elizabeth Dorsett saw the light and to-day she celebrates her hundredth birthday. She was consequently born a year before the battle of Monmouth and within a year of the Declaration of Independence. She is a great aunt of Governor Bedle, of New Jersey, who will probably pay her his respects to-day; a cousin of Senator Garrett D. Wall, of Burlington, N. J., and is distantly connected with Police Superintendent Walling. She lived on the Dorsett farm till 1838, when she removed to Matawan. Some fifteen years ago she took up her residence with Mr. Osborn, at Middletown, in his pretty little villa. She has a good appetite, is cheerful and hopeful, goes up and down stairs without difficulty and makes her own bed. The capture of her father, Joseph Dorsett, by the British, with several other citizens, took place on the 26th of June, 1780. The capture was effected by the Queen's Rangers, who landed at Conascunk (two miles from Keyport), plundered the houses and carried the captives to the famous old sugar house in Liberty street, which adjoined the old Dutch Church afterward the Post Office. Among the captives were James, John and Philip Walling, ancestors of our present Police Superintendent. The venerable Asher Taylor, Vice President of the Exchange Insurance Company, of this city, will be among her visitors to-day; likewise representatives of the Hoboken Dorsetts, of the Osborns, the Fields, of Middletown, and many others.

THE ORDER FORGERS.

The two young men charged with being members of a gang of forgers who for months past have been fleecing downtown merchants by forged orders were again brought to the Tombs Police Court yesterday. The prisoners, whose names are Edward G. Haight and Edward Burnett, pleaded not guilty, and waived examination. They were thereupon held in $2,500 bail each. Burnett's complicity is confined, it is alleged, to receiving some of the stolen property. Charles Nelson, also implicated, is at present serving a one year's sentence in the Penitentiary.

THE VAUGHAN FAMILY TROUBLES.

TO THE EDITOR OF THE HERALD:—

In recent issues of the paper articles have appeared reflecting seriously upon my character in connection with the Vaughan family troubles. Permit me to state my side of the case:—

My father-in-law, Mr. Vaughan, in the spring of 1876 requested me to draw a deed to myself of his real estate, it being then heavily encumbered with mortgages, unpaid interests, taxes and assessments, in fact, more than it would bring at a forced sale, his equity in it amounting to little or nothing. I drew the deed, but declined to take title myself, leaving the grantee's name blank. About a month before his death, however, he induced me to take the deed. My name was filled in as grantee, and on the following day I took it to his residence. Mr. Vaughan then promised to go out and execute the same when the weather was fine. The evening before his death I called at the house and inquired about the deed. I was informed that it was not executed. Then, at the request of the wife and daughter, particularly the latter, a notary was procured, and it was executed. Mrs. Vaughan also joined in the execution. The daughter, who is twenty years old, now claims that this very same deed is fraudulent and void. It appears from her own sworn affidavits that she raised her father up in the bed on two different occasions that evening to execute the paper. Mr. Vaughan died in about twenty-four hours after the execution of this deed and his wife five weeks later. As to this deed I took it for certain purposes, which I have ever since been carrying out, in the way of improvements upon the property, which was in a forlorn condition at the time of Mr. Vaughan's death, paying a portion of the interest on the mortgage and some claims against Mr. Vaughan. The value of these improvements which I simply want to get back, and nothing more, is about $2,500, on payment of which I will gladly reconvey the property. I have paid all the money collected for rents over to the daughter and given her my own money besides until the commencement of this trouble. As to taking property wrongfully, I merely took what I was entitled to, in the middle of the noonday, under authority of law and as my wife's administrator. For this a charge of larceny was trumped up against me. The proceedings to dispossess, as stated in the HERALD, were only commenced after all my patience and forbearance with this girl had been exhausted. If it had not been for me she would have been houseless long ago. All of these troubles were fomented by a man named Hanlon, assisted by his sister, who has secured control over this girl to such an extent as to have himself appointed her guardian.

JOHN HAYES.

THE MORMON ULCER.

MENDACITY PART OF THE MORMON CREED.

[From the Salt Lake Tribune.]

Among other peculiar doctrines set up by this Latter Day priesthood is the doctrine that lies will outlive the truth. The whole ecclesiastical system being built upon a lie—the divine appointment of Joseph Smith, the finding of the plates, and the inspiration and infallibility of the priesthood he founded—other lies have to be fabricated to support it; and thus we have Mormon mendacity pitted against the truth of the world, in a daring attempt to make the false outlast the real. The Christian religion having a basis of truth to stand upon, we find one of its chief apostles inviting his hearers to indulge a spirit of inquiry. "Prove all things," he says; "hold fast that which is good." But the Mormon devotee must not inquire, because its everlasting priesthood well know that the man who is daring enough to think for himself is irremediably lost to the faith. A free press, a free pulpit, a system of free schools, with a New York HERALD commissioner thrown in, are all fatal to the domination of this theocracy; they let light into this darkened kingdom, and lies, like all other diableries, only have efficacy in the gloom of night. Hence those agencies stir up opposition—if the nineteenth century would not thrust itself into Zion there would be no trouble. And the Mormon priests—these chosen servants of God—combat them stoutly with their only weapons—lies. Abuse is poured out from every unclean fount, detraction and calumny assail the character of every daring intruder who makes his voice heard. These everlasting priests and their debased newspaper scribblers know they have no argument with which to repel argument, so they resort to invective. If they cannot knock down a truth, they can at least call the man who utters it a fornicator and a drunkard. It is true such a mode of defence is a lamentably weak one, but it is the best they have, and being really without power to defend their position they think to scare off their assailants by making a terrible confusion and din.

MOLLY MAGUIRES AND MORMONS.

[From the Salt Lake Tribune.]

If an indictment should be found against Brigham Young indications lead us to believe that he would resist arrest. We understand that the strongest kind of evidence is in the hands of the District Attorney, and if the chosen servant of the Lord should be brought to trial before an honest jury there is little room for doubt that he will be convicted of a capital crime. But, like the Molly Maguires of Pennsylvania, he is protected by a secret band of outlaws who are sworn to resist the execution of the laws. For twenty years he and his fellow assassins have defied all attempts of the courts of Utah to execute judgment, and the same spirit pervades his infatuated followers as they have heretofore shown. In Pennsylvania the State and local authorities were on the side of the law and, by a concerted effort, the leading criminals were brought to justice, and the former terrible and secret power of the organization broken up and destroyed. But here the local authorities are all in league with the criminals and against the enforcement of law. A combined effort will shortly be made in this city to bring the leading criminal to justice and visit upon him that doom which uninspired malefactors in other parts of the country receive. But all feel it to be a daring, if not dangerous, attempt and, unless there shall be a sufficient military force at hand to overawe resistance when the arrest is made, all are conscious that the peace of the Territory and the safety of the Gentile inhabitants depend upon the will of this one wicked man. If he calls upon his hosts to resist there are, no doubt, thousands so far misguided as to religiously believe that in defending their holy prophet from arrest they are rendering acceptable service to God.

THE INEVITABLE FATE OF MORMONISM.

[From the Salt Lake Tribune.]

If they could claim and enforce immunity from unfavorable criticism and comment it would be a dark day indeed for Utah and its inhabitants; for its men who groan under mental bondage; for its women who, in addition to mental bondage, groan under the physical bondage of polygamic marriage, and who are crying out, "O Lord, how long before we are delivered?" But Brigham Young cannot live forever, and some one who understands the situation must succeed him in order to preserve the Mormon Church from total wreck; one who will yield to the dictates of reason, and who will not put so-called revelation in opposition to common sense, ancient barbaric practices against modern civilization. The verdict of humanity is against making the Mormon experiment permanent and enduring, and this reflection brings us to understand the fact which the Mormon leaders are fully aware of—that it is the outside pressure of Gentiles and apostates which is the real cause of trouble in Mormondom, and fostering the abiding sense that is continually growing among the more intelligent Mormons, that the distinguishing feature of the system must be given up, that priestly rule, exclusive dealings and polygamic marriage must in the very nature of things be abandoned. They have been tried and found wanting in all the elements of justice, virtue and the lasting welfare of human beings. Therefore the presence of intelligent men, especially representative journalists, is bound to have a good effect both inside and outside of Utah.

THE INVENTION OF THE MORMON FAITH—THE WORK OF AN UNSUCCESSFUL NOVELIST.

[From a speech of Judge Cradlebaugh in 1863.]

Mormonism is one of the monstrosities of the age in which we live. It seems to have been left for the model Republic of the world, for the nineteenth century, when the light of knowledge is more generally diffused than ever before; when in art, science and philosophy we have surpassed all that ages of the past can show, to produce an idle, worthless vagabond of an impostor, who heralds forth a creed repulsive to every refined mind, opposed to every generous impulse of the human heart and a faith which commands a violation of the rights of hospitality, sanctifies falsehood, enforces the systematic degradation of women, not only permits, but orders, the commission of the vilest lusts in the name of Almighty God himself, and teaches that it is a sacred duty to steal and murder. * * *

Mormonism is in part a conglomeration of illy cemented creeds from other religions, and in part founded upon the eccentric production of one Spaulding, who, having failed as a preacher and shopkeeper, undertook to write a historical novel. He had a smattering of biblical knowledge, and chose for his subject, "The History of the Lost Tribes of Israel." The whole was supposed to be communicated by the Indians, and the last of the series was named Mormon, representing that he had buried the book. It was a dull, tedious, interminable volume, marked by ignorance and folly. The work was so flat that no publisher could be induced to bring it before the world. Poor Spaulding at length went to his grave, and the manuscript remained a neglected roll in the possession of his widow.

Then arose Joe Smith, more ready to live by his wits than by the labor of his hands. Smith had early in life manifested a turn for pious frauds. He had figured in several wrestling matches with the devil, and had been conspicuous in giving eventful experiences in religion at certain revivals. He announced that he had dug up the book of Mormon, which taught the true religion. This was none other than poor Spaulding's manuscript, which he had purloined from the widow. In his hands the manuscript became the basis of Mormonism. Joe became a prophet, the founder of a religious sect, the president of a swindling bank, the builder of the city of Nauvoo, Mayor of the city, General of the armies of Israel, candidate for President of the United States and finally a martyr, as the saints choose to call him. It was unfortunate that such was his end, for his followers raised the old cry of martyrdom and persecution, and, as always proved, "the blood of the martyr was the seed of the Church."

TIMELY PREPARATION.

[From the Gold Hill News.]

We have entire faith in General Crook's veracity, and believe that "no outbreak will occur unless Brigham Young is indicted." But we believe, further, that District Attorney Howard, who is now on his way to Washington to consult with Attorney General Devens, has in his possession evidence enough to secure the indictment of Brigham Young. The Mormons know this, and they are preparing for it. They are arming and drilling, and getting ready to fight for their leader. General Crook's judgment may be very correct, but in our opinion it is always well to be prepared for an emergency, especially when you know that the emergency is sure to develop. If President Buchanan had been a true patriot, and prepared the nation to meet the rebellion when he first saw the clouds in the political sky, we could have wiped it out in a day. Not being prepared, it took us four years to trample treason in the dust. It will be so in Utah if General Crook's counsels are followed. If the government is true to itself it will be prepared for the Mormon rebellion, which is sure to come when Brigham Young is indicted.

THE SWILL MILKERS.

A CHANGE OF BASE BY THE BLISSVILLE SWILL MEN—WHAT THE NEW YORK ACADEMY OF MEDICINE SAID OF SWILL MILK NINETEEN YEARS AGO.

Operations at the swill milk stables in Blissville have been suspended, and the proprietors are erecting new buildings in a secluded spot at Laurel Hill for the continuation of the business. Already about one hundred of the cows have been domiciled in their new quarters. The adjourned term of the Queens County Circuit Court, Judge Donohue presiding, will commence at the Court House, Long Island City, on Monday next, when several important causes will be tried, including that of the Blissville swill milkmen.

TO THE BROOKLYN SECRETARY.

It is to be regretted that the answer of the new Board of Health to the peculiar letter of the swill milk apologist did not include a short statement of the detrimental influence of swill milk on the health, even the life of infants. When a public servant takes it upon himself to utterly ignore the laws and begins to write letters upon subjects he is totally ignorant of for the purpose of publicly defending men under indictment the time has arrived when he should be taught something. For his information, then, and that of the general public, whose physical welfare he is, one would suppose, bound to study, the following report on swill milk, which was presented to the New York Academy of Medicine in 1858, is republished:—

THE REQUEST.

TO THE PRESIDENT OF THE NEW YORK ACADEMY OF MEDICINE:—

At a meeting of the Board of Health, June 7, 1858, the following resolution was adopted—viz.:—Resolved, That the Academy of Medicine be requested to lay before the Board such facts and evidence as they may have in relation to the milk furnished to our citizens.

D. V. VALENTINE, Clerk.

NEW YORK, June 16, 1858.

THE REPORT.

The special committee appointed to prepare a reply to the communication which was received from the Mayor's office on the 10th of June last, asking information in reference to the effect of milk from swill fed cows upon the health of those who use this milk as an article of diet, beg leave respectfully to report that since the date of their appointment they have had this subject under careful consideration, and that the result of their deliberations and inquiries will be found embodied, for the most part, in the accompanying documents. The first of these was drawn up and presented in the form of a distinct communication to the committee by Dr. S. Patton Percy, who has throughout officiated as secretary. The chemical analyses recorded in this elaborate memoir were made by himself, as were also the microscopic examinations and drawings, and the cases of disease which he relates as resulting from the use of the milk in question were, under the instructions of the committee, also collected by himself. In order to facilitate their inquiries and to obtain all the information that could be procured in reference to the keeping and management of the cattle at the distillery stables, and to the quality of the beef supplied by these cattle to the markets of this city, the committee, at an early stage of their investigations, sought the co-operation of two other gentlemen, not of the medical profession. The first of these, Mr. Solon Robinson, has long been conversant with the raising and fattening of cattle; and the second, Mr. Thomas Devoe, has been long and extensively engaged in the slaughtering of cattle and in supplying our markets with wholesome beef. To the communication furnished by Dr. Percy will be found appended a letter from each of these gentlemen, giving their views as to the character of the beef from distillery cows compared with that from grain fed animals.

FILTH AND DEATH.

To present, in a few words, the results at which your committee have arrived, and which appear to be substantiated by the facts embodied in the accompanying documents, they are as follows:—

First—The housing of milch cows in great numbers within the narrow space allotted to them in the distillery stables of this city, of Brooklyn and Williamsburg is of itself sufficient to vitiate their health and to render their milk unwholesome. But in the actual condition of the stables these deleterious effects are materially augmented by want of cleanliness, insufficient light and a vitiated atmosphere, not to speak of the restraint and want of exercise to which the cows are subjected, nor of the unwholesome food supplied to them.

Second—The number of cows at present kept at the few distillery stables which still exist in this city is of no great account, as in all they probably do not exceed six hundred. The business of supplying milk for this city from swill-fed cows is mostly conducted at Williamsburg or Eastern Brooklyn, where the distillery stables are numerous, extensive, crowded, wretchedly constructed and filthy to the last degree. Many of the animals confined in these stables were found in a sickly condition, and on careful inquiry at one of the largest of these stables we ascertained that the annual mortality among the cows confined there was not less than ten per cent.

DEATH IN THE BEEF.

Third—Such of the cows at these establishments as remain comparatively healthy are retained, without once leaving the stable, as long as they continue to yield a sufficiency of milk, usually for about a year; after which they are fattened for the market, slaughtered and sold as beef. The beef produced from these animals is unsavory, and easily recognized by its offensive odor, and this odor is not dissipated even by the process of cooking. The fibre of this beef is flaccid and its cellular tissue is found infiltrated with watery fluids instead of solid fat. Hence, in the process of cooking, it shrivels and presents other appearances by which the practiced eye can readily distinguish it from the beef of healthy, grass fed cattle.

ACIDS AND SUGARS.

Fourth—The swill which constitutes the principal food of the cows at these stables, and which is but the refuse material left after the process of distillation, is, even at the period of its withdrawal from the alembic, and long before it is distributed to the feeding troughs, found to be highly charged with acetic acid. Its acidulous quality, intermixed with a sort of saccharine and farinaceous flavor, is not very disagreeable to the taste, but taken into the stomach the swill operates briskly as a purgative, disturbing the bowels and augmenting the urinary secretions. These effects were sensibly experienced from the use of it by two of the members of the committee, and from the continual purging of the cattle and the excessive amount of urinary secretion we are led to the belief that its effect upon the cows is not materially different from its effect upon the human system.

DEATH IN THE MILK.

Fifth—The milk of these cows does not exhibit the characteristics of wholesome milk. It presents almost invariably an acid reaction, while the milk from healthy, grass-fed cows is, when first drawn, always alkaline. The acid quality of this distillery milk, it is true, is not perceptible to the taste while the milk is fresh, but it is always recognizable by chemical tests; and this feature is, of itself, sufficient to condemn the milk in question as an article of food, especially for young children. This remark applies to the milk procured from such of the cows in those stables as appear to be in good health. It must apply with still greater force against that procured from such of them as are actually diseased. And it is ascertained that the milk from the diseased cows is mixed with that from the others and distributed to the consumers.

Sixth—The cases collected under the direction of the committee by Dr. Percey, demonstrate the fact, independent of any chemical examination or any *a priori* reasoning that the milk procured from these swill fed animals is injurious to those who use it. The difficulty of authenticating cases of this sort, and of establishing the relation of cause and effect between the milk and the disease, which are attributed to the use of it, will be sufficiently understood by every medical observer, and but for the unwillingness of the committee to adduce any cases in which this connection could not be clearly established numerous other similar instances would have been added to those which Dr. Percey has reported.

MR. SECRETARY, TAKE NOTE.

One instance within the knowledge of the committee serves to show that the housing of cows in private stables, even where these cows are fed on wholesome food and kept carefully under the eye of those who use the milk in their own families, so long as the cows are restricted to the stable and deprived of their appropriate exercise in the open air, deteriorates the quality of the milk to such a degree that it cannot in all cases be used with safety as food for young children.

In view of these disclosures it is evident that the traffic in the milk of swill-fed cows is one which is detrimental to the health of the community and that, for this reason, it should be discontinued. Finally, your committee, before closing this report, beg leave to submit the following resolution:—

Resolved, That a copy of this report and of its accompanying documents be properly engrossed, signed by the President of this Academy and transmitted to the Hon. Daniel F. Tiemann, Mayor of this city, as the response of this Academy to the inquiry in reference to the effects of the milk from swill fed cows, which, on the 10th day of June last, was submitted to the Academy by the city authorities.

All of which is respectfully submitted.

JOHN WATSON, M. D.
J. P. BATCHELDER, M. D.
B. FORDYCE BARKER, M. D.
A. G. GUNN, M. D.
S. ROTTON PERCY, M. D.

NEW YORK, March 2, 1859.

The foregoing report and resolution, with the documents thereunto appended, were unanimously adopted by the New York Academy of Medicine, March 2, 1859.

JOHN WATSON, M. D.,
President of New York Academy of Medicine.

T. GAILLORD THOMAS, M. D.,
Recording Secretary of Academy of Medicine.

ADVICE GRATIS.

It is true that some years have elapsed since the above report was adopted by the leading medical society of this country, but all the truths therein expressed will hold good at the present day. Some of the signers of the above report are still alive, and those who are living hold responsible chairs in the different medical colleges of this city, and if the learned Secretary of the Brooklyn Health Board would apply to them they would doubtless give him some points that might possibly be valuable to an invaluable secretary.

THE MINING EXCHANGE.

The American Mining Board had a ballot yesterday on the question of a consolidation either with the New York Mining Stock Exchange or the Open Board of Brokers, which resulted in a vote of sixty-four in favor of the former against nineteen in favor of the latter project. After the ballot had been declared a committee of nine was appointed to modify the constitution so as to meet the requirements of the consolidation. This union, it is generally believed, will result in winding up the concerns of the Open Board, as well as making a permanent market here for mining shares.

CANAL TOLLS.

Two members of the Produce Exchange who went to Albany to speak against any advance in canal tolls sent the following despatch down yesterday:—"Board adjourned without action on toll question, which will not come up again until September." The receipt of this message gave much satisfaction at the Exchange, where the prospect of an advance in tolls was looked on with great disfavor.

A COURT ROOM HOMICIDE.

[From the Chicago Inter-Ocean.]

TERRE HAUTE, Ind., June 10, 1877.

In Marshall, Ill., while trying a petty cow case before a justice, yesterday afternoon, at three o'clock, S. S. Whitehead and John L. Ryan, the opposing counsel in the suit, engaged in an altercation which ended in an attack upon Whitehead by Ryan and the shooting of the latter in the abdomen, a mortal wound being inflicted. Friends of Whitehead also took a hand in the fight, and cut Ryan in the back and hip. The citizens of that town are wild with excitement over it.